IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.3.2002

CORAM:

THE HON'BLE MR. JUSTICE K. SAMPATH

W.P.No.12370 of 2001 and W.M.P.Nos.18134 to 18135 of 2001

P. Radhakrishnan ... Petitioner

Vs.

1.The District Registrar of Societies
(Administration), Palace Road,
Madurai South, Madurai.

2.Madurai Ayira Vysya Manjaputhur
Mahajana Sabai by its President,
having Office at No.17, East
Marret Street, Madurai. ... Respondents

For Petitioner: ... Mr.P. Gopalan

For 1st Respondent: ... Mr.P. Chandrasekaran,
Special Government
Pleader.
For 2nd Respondent: ... Mr.T.R. Rajagopalan,
Senior Counsel for
Mr.K. Chandrasekaran

This writ petition is filed under Article 226 of the
constitution for the issue of a certiorarified mandamus.

: ORDER
The prayer in the writ petition is for a certiorarified mandamus calling for the records in the issue of the order passed in Mu.Mu.N.913 1/E1/2000 dated 11-6-2001 on the file of the first respondent, viz. The District Registrar of Societies (Admn.), Madurai South, Palace Road, Madurai, and quash the same with a consequential direction to the respondents to hold the election of the other members of the Managing Committee of the second respondent Sabai excepting the President. The interim prayer is also for the same relief.

2. By consent the main writ petition itself is taken up.

3.The case of the petitioner is as follows:

The second respondent is a society registered under the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as the Act). It has eight subsidiary trusts under its control. Persons belonging to Manjaputhur Community having residence at Madurai and over 18 years of age are enrolled as members of General Body of the second respondent Sabai and subject to payment of Mahamai to the said Sabai, the members are entitled to vote in the General Body as contemplated under clause 13(9) of the By-laws of the Sabai for the election of the members of the Committee comprising 32 persons for running its affairs. Under clause 13(7) of the By-laws, all the members of the Committee shall be elected only in the General Body and the term of office of the office bearers shall be three years contemplated under clause 13(8) of the By-laws and also as per the provisions of Section 15(4) of the Act. The provisions of the Act and the various clauses in the By-laws were scrupulously followed all these years for convening the General Body Meeting for holding the election. In the election held on 16-10-1989, the petitioner was elected as one of the Vice Presidents of the Sabai. This had been followed throughout. Section 15(1) of the Act requires every registered society to file a copy of the register maintained by it under Section 14(1) of the Act from time to time and to file with the Registrar, notice of any changing among the members of the Committee. For the period starting in 1996 election was held on 28-7-1996 and new office bearers were elected and they assumed charge on the same day. Notification for holding the election was being issued as per clause 26(2) of the By-laws. In the year 1999 there were about 9000 members in the second respondent Sabai. Contrary to the provisions of the By-laws and the provisions of the Act, instead of issuing election notification for holding the election of new members of the Committee for three years from 1999, the then President of the Sabai had election notification dated 11-7-1999 issued for holding the election of President alone on 8-8-1999. The petitioner along with other members of the Sabai made representation to the Election Officer for holding the election of other members of the Committee and submitted their nominations. The nominations were returned by the Election Officer with an endorsement that he had been appointed to hold the election of the President alone. In view of the violation of the provisions of the Act and the clauses in the By-laws, the petitioner and others filed a suit O.S.No.667/99 before the Principal District Munsif's Court, Madurai, for a declaration that the election notice dated 11-7-1999 issued by the Sabai for holding the election of the President alone was null and void, for a mandatory injunction directing the second respondent Sabai to conduct the election of the 32 members of the Sabai as per the By-l aws of the Sabai and the provisions of the Act. Pending suit the plaintiffs filed I.A.No.548/99 for an injunction restraining the defendants from holding the election of the President alone and I.A.No.549/99 for the appointment of an Advocate Commissioner for holding the election of the members to the Executive Committee in entirety. Though the suit was filed on 19-7-199 9, due to dilatory tactics of the defendants therein, enquiry was taken up only on 6-8-1999 and the applications were dismissed. On 6-8-1 999 itself the

petitioner along with more than 2000 members of the Sabai made a representation to the first respondent, the District Registrar of Societies (Administration) intimating about the violation of the By-laws and the provisions of the Act. The Election of the President alone as per the schedule was held on 8-8-1999 and a new President was elected. As there was no election of the other members of the Managing committee in the General Body Meeting held on 8-8-1999, the petitioner and others sent a representation on 10-8-1999 and sought for a direction to conduct election of other members of the Managing Committee. Though the first respondent received the representations, no action was taken. The new President is functioning with his henchmen and the list of members of the Managing Committee as contemplated under Section 14(1) of the Act has not been furnished to the first respondent. The first respondent continued to keep silence over the matter without taking any decision on the above said two representations. Yet another representation was given on 21-9-2000. As no action was taken, a writ petition in W.P.No.18029/2000 was filed before this Court for a direction to the first respondent to dispose of the representations. On 19-3-2001 a direction was given to dispose of the representations on merits and in accordance with law. After receipt of the order in the writ petition, the first respondent without issuing any notice to the petitioner or to the second respondent Sabai, passed the impugned order by rejecting the claim of the petitioner in regard to the holding of election of the other members of the Managing Committee comprising of 31 members for the second respondent Sabai under the pretext that there is no provision of Section 15(3) under the Act. The first respondent without adverting to the minutes of the General Body Meeting of the second respondent Sabai in all the previous years, passed the impugned order stating that the members were nominated by the President. Such nominations were made only in lieu of resignation or death of a member during the interregnum by way of co-option. The order impugned suffers from serious infirmities and is liable to be quashed.

4. Various grounds have been set out in the affidavit in support of the writ petition. They will be referred to if and when necessary during the course of the order.

5. A counter and an additional counter have been filed by the second respondent. The various allegations in the affidavit in support of the writ petition are denied. In particular, the counter and the additional counter stress the fact that only the President used to be elected in the General Body Meeting and the other Committee Members were only nominated by the President. The practice has been in vogue from 1989. The interpretation given to clauses 13(9) and 13(7) of the By-laws of the Sabai by the petitioner is not correct. Under clause 13(M)(i) of the By-laws of the Sabai, election for the post of President alone is provided. There is no other By-law to elect other office bearers or Executive Members of the Sabai. As per clause 13(M)(i) of the By-laws, the elected President has to announce and publish the list of various office bearers within fifteen days from the date of his election. The President has to select the office bearers and the other Executive Committee Members from among the members of the Society, they being

proposed and seconded in the General Body Meeting. There is no provision for such election of the various office bearers and Committee Members simultaneously with the election of the President under clause 13(M)(i) or 13(M)(7). The various office bearers and Executive committee Members have to be elected by the President at any time after his election. He has to inform the list of office bearers within 15 days of his election as set out in clause 13(M)(4). The By-laws of the Society are in accord with the provisions of the Act. There is no contradiction. The members of the Sabai were duly informed about the date of election as 8-8-199 9. The circular dated 11-7-1999 had been properly, lawfully and legally made. The election was held on 8-8-1999 and the President, office bearers and Executive committee Members were elected according to law. By publication dated 14.8.1999 also the members of the Sabai were informed about the particulars of the elected office bearers and Executive Committee Members for the period of three years from 8.8.1999. There was no illegality in the conduct of the election. There is no question of any independent or separate election for office bearers.
In 1983 there was contest for the post of President.
Another member wanted to stand for the post of President. The General Body Meeting was adjourned. On the adjourned day, nominations were made by two persons. The Election Officer conducted the election of the President with the help of another person and announced the result. The elected President selected from the members of the Sabai, the various office bearers and Executive Committee Members. The elected candidate claimed that he nominated them and his claim was upheld in O.S.No.1507 /83 on the file of the Principal District Munsif's Court, Madurai Town. The decision operates as res judicata. The convention and precedent have been followed. There was never any independent or separate election for the post of office bearers and Executive Committee Members. The petitioner figured as the sixth plaintiff in O.S.No.667/99 on the file of the Principal District Munsif's Court, Madurai Town, which was for declaration that the notice dated 11-7-1999 to conduct the election of President alone of the Sabai and other Society/Trusts on 8-8-1999 and the appointment of the Election Officer were null and void, illegal and invalid and not in accord to By-laws and the Act and for consequential permanent injunction to restrain the Election Officer from conducting election and also for mandatory injunction directing to conduct the election of all members of the Executive Committee of the Sabai and 8 other trusts by a Commissioner to be appointed by a Court. The points raised here were subject matter of the said suit. There were two interlocutory applications filed. Both applications were dismissed by the learned District Munsif. A categorical finding has been given that all along the members of the Executive Committee were selected only by the President for the past many decades and that too in the General Body Meeting and such selection would be approved by the General Body. The same procedure was followed in 199 9 also. When admittedly a suit is pending, no parallel proceedings could be taken. Section 15(3) of the Act states that Members of the Committee shall be appointed at the meeting of the Society by resolution of a majority of members present and entitled to vote thereat. The name of each member of the Executive Committee as selected by the President is proposed by a member and

seconded by another. It is left to the General Body to approve or disapprove the same. The provisions of Section 15(3) of the Act have been complied with in letter and spirit.
In the General Body Meeting held on 8-8-1999 the names were proposed by Thiru E.K. Lakshmanan Chettiar and seconded by R. Dharmarajan Chettiar. The Election Officer would offer any member present in the General Body Meeting to contest any post so announced if he is desirous of contesting for a particular post. On a similar announcement being made during the General Body Meeting on 8-8-1999 no one came forward to contest to any post. The list was as per clause 14 of the By-laws. A majority of members who were entitled to vote accepted the names and the names were approved by the General Body for the respective posts. Falling in line with the previous years the General Body had approved the list submitted by the Election Officer. For all the trusts under the Society similar procedure has been followed. It is not necessary to notice the details here. The total number of Executive Members of all the trusts under the Society works out to 201 and with the President it is 202. As per the contention of the petitioner, election to all the 201 Executive Committee Members has to be conducted. All the members have to vote for each post and the number of votes will be in the region of 18 lakhs. It will be impossible to conduct such an election. The process adopted all these years completely satisfies the provisions of Section 15(3) of the Act. There is no case made out for the grant of the prayers.

6. It is mainly contended by Mr.P. Gopalan, learned Counsel for the petitioner, that the provisions of the Act have to be scrupulously followed as also the By-laws and in the event of any conflict between the Act and the By-laws, the Act will prevail, that the first respondent grievously erred in stating that there is no provision as Section 15(3) under the Act. According to the learned Counsel, the first respondent has passed orders without reference to the provisions of the Act and the By-laws of the second respondent Sabai. The first respondent also was in error in relying on the decision in O.S.No.1507/83 on the file of the District Munsif's Court, Madurai, when the subject matter in the suit was with regard to co-option of a member during the interregnum on account of the demise/resignation of a member of the Managing Committee. In any event, having held that the clauses in the By-laws of the Sabai are not in accordance with the provisions of the Act, the first respondent ought to have directed the second respondent to conduct the election of the other members of the Managing Committee by convening a General Body Meeting. The learned Counsel drew my attention to the several provisions in the Act and the clauses in the By-laws and submitted that the first respondent was in error in his appreciation of the material provisions of the Act and the clauses in the By-laws. The learned Counsel also relied on the judgment of this Court in R. KARUPPAN VS. P.K. RAJAGOPAL, SECRETARY, THE ADVOCATES' ASSOCIATION, HIGH COURT BUILDINGS, CHENNAI AND 4 OTHERS (2001(3) CTC 486).

7. Mr.T.R. Rajagopalan, learned Senior Counsel for the second respondent, submitted that the practice has been in vogue since

1983 when the President alone would be elected at the General Body Meeting and thereafter, on floor nominations the members of the Managing Committee would be elected and this practice was followed during the year 199 9 and no exception could be taken to the same. The learned Senior Counsel also submitted that the writ petitioner himself got nominated on previous occasions as member of the Managing Committee and he did not question the same at any point of time. In any event, the learned Senior

Counsel submitted that as pointed out by the first respondent, the lacuna, if any, will have to be rectified and in the meantime there could be no calling for the election of the office bearers of the Committee.

8. The first respondent in his order dated 11.6.2001 has referred to By-law Nos.13(M)(7) and 14 and observed that the members of the Managing Committee will have to be elected at the General Body and the same has to be done by the majority decision. He has further stated that in accord with the same, at the General Body the President was elected and thereafter the names of the Committee Members were read out, proposed by one member and seconded by another member and the members had been elected by the approval of the majority of the members. This practice has been in vogue as would be evident from the prior proceedings. The first respondent also has stated in his order that in the representation dated 21-9-2000 given by the petitioner, it had been stated that the election had to be in accordance with Section 15 (3) of the Act, but there was no such provision in the Act. The petitioner had invoked a non-existent provision. Here itself it has to be pointed out that there is indeed a provision as Section 15(3) in the Act, which provides that the members of the Committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat. The first respondent has failed to notice the existence of Section 15(3) in the Act. This is a mistake committed by the first respondent. However, this need not loom large in view of the practice that had been followed in the election of the office bearers of the Managing Committee. The first respondent had noted that as per By-law 13(M)(4), the President is given powers to appoint the office bearers. But, at the same time, there is By-law 13(M)(7) to the effect that the members of the managing committee have to be elected by the members at the General Body. However, the first respondent has observed that the proceedings of the second respondent right from 1983 have been in consonance with both the By-laws, though they are in conflict with each other. All the members connected with the second respondent Sabai had not objected to the procedure followed all along and in fact, in the suit of the year 1983 the nomination of a member of the Committee had been accepted by the Civil Court and so far as the petitioner is concerned, he got nominated on various dates by the President and he had been acting as a member of the Managing Committee. The dates are 19-2-1984, 17-1-1993 and 24-9-1995. the first respondent has concluded his order by saying that in future the present members of the Managing Committee shall ensure that the By-laws are in conformity with the provisions of the Act and the Rules made thereunder.

9. The so-called nomination took place in the year 1999. No doubt, the petitioner had been knocking at the doors of the first respondent ever since 1999. He gave several representations and those representations were not considered till after a direction was issued by this Court in a writ petition filed by the writ petitioner and the net result is that the term of the office bearers elected/nominated in the year 1999 will be coming to an end within a few months in August, 2002. I am in agreement with the contention of the learned Counsel for the writ petitioner that the provisions of the Act will prevail over the By-laws that there can be no estoppel against the statute even conceding without admitting that the writ petitioner himself had the benefit of getting nominated by the President at the relevant time on the various dates, he could still question the manner in which the members of the Managing Committee got nominated by the President.

10. It is necessary in this connection, to refer to the relevant clauses in the By-laws. Clause No.13(M)(7) says that the members of the Managing Committee shall be elected by the members of the Sabai at the General Body Meeting.

11. By-law 13(M)(8) provides that the term of office is three years and they will continue in office till the members of the next Managing Committee are elected. By-law 13(M)(4) provides that within fifteen days of the election of the President, the list of the new President, Vice President, Secretary, Treasurer and the Managing Committee Members will have to be printed and distributed to the members. By-law 14 provides that the members of the Managing Committee shall be decided by a majority of members present at the General Body Meeting, the qualification being that they should be eligible to become members. They would hold office for three years from the date of nomination/election and that after the period of three years, they are entitled to again contest for the post of members of the Managing Committee. By-law 26(M) provides that for convening the General Body Meeting, there should be prior notice of 21 days. By-law 2 6(,) provides that every member of the General Body has one vote.

12. Thus it is clear that an election is contemplated though there are some clauses giving a contrary picture. Section 15(3) of the Act which has already been referred to, provides that the members of the Committee shall be appointed at a meeting of the Society by a resolution of a majority of members present and entitled to vote thereat. (Emphasis supplied)

13. In my view, the By-laws will have to be in conformity with the provisions of the Act and in particular, in the matter of election of members of the Managing Committee, it should be in conformity with Section 15(3) of the Act.

14. In R. KARUPPAN ETC. (1001(3) CTC 486) it has been held by the learned Judge dealing with the procedure for calling for extraordinary General Body Meeting and annual General Body Meeting that

there must be at least 21 days notice to the members, that the said notice should specify the date, hour and place and object of the meeting, that it should be sent either by local delivery or by post or circulation or by publication through Press and also affixing such notice on the Notice Board of the Society and that any pro vision contained in Bylaws which is contrary to statutory provisions contained in Societies Registration Act would be invalid, as for example, if there is a Bylaw which provides for issuance of notice of meeting in manner not provided under Societies Registration Act or Rules framed thereunder, it would be invalid. Equally, if a meeting is convened in accordance with By-laws, but without adhering to the provisions of statutory enactment and rules, it would be invalid.

15. As already pointed out, it will be an unnecessary exercise to call for an election at this juncture. The present office bearers can continue till the term gets over. In the meantime, the second respondent Sabai is to take all steps to amend the By-laws to be in conformity with the provisions of the Act. Even if it is not done before the next election, it will be in the fitness of things if the provisions of the Act are strictly followed and proper election is held not only for the President, but also for the office bearers of the Managing Committee. With these observations, the writ petition is disposed of. Consequently, the direction and the stay petitions in W.M.P.Nos.18134 and 18135 of 2001 are closed. There will be no order as to costs.

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Index: Yes
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The District Registrar of societies
(Administration), Palace Road,
Madurai South, Madurai.

K.SAMPATH, J.

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